

Union Calendar No. 453

107TH CONGRESS
2D SESSION

H. R. 4701

[Report No. 107-725]

To designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission.

IN THE HOUSE OF REPRESENTATIVES

MAY 9, 2002

Mr. GORDON (for himself, Mr. OSBORNE, Mr. DINGELL, Mr. TOWNS, Mr. STEARNS, Mr. JOHN, and Mr. CLEMENT) introduced the following bill; which was referred to the Committee on Energy and Commerce

OCTOBER 7, 2002

Additional sponsors: Mr. HAYES, Mr. WAMP, Mr. FORD, Mr. BROWN of South Carolina, Mr. OTTER, Mr. CULBERSON, Mr. WILSON of South Carolina, Mr. THUNE, Mr. PETERSON of Minnesota, Mr. REHBERG, Mr. CRENSHAW, Mr. SCHROCK, Mr. CANTOR, Mr. GRAHAM, Mr. PENCE, Mr. DEMINT, Mr. BEREUTER, Mr. PUTNAM, Mr. MORAN of Kansas, Mr. KIND, Mr. LUCAS of Kentucky, Mr. BROWN of Ohio, Mr. SHIMKUS, Mr. TERRY, Mr. STRICKLAND, Mr. HORN, Mr. JEFF MILLER of Florida, Mr. FORBES, Mr. BOOZMAN, Mr. AKIN, Ms. CARSON of Indiana, Mr. JEFFERSON, Mr. DUNCAN, Mr. RUSH, Mr. UDALL of New Mexico, Mr. PLATTS, Mr. LAHOOD, Mr. SIMPSON, Mr. CARSON of Oklahoma, Mr. JENKINS, Mr. SULLIVAN, Mr. WATKINS, Mr. WATTS of Oklahoma, Mr. TIAHRT, Mr. SHERWOOD, Mr. HERGER, Mrs. CUBIN, Mrs. WILSON of New Mexico, Mr. GREEN of Wisconsin, Mr. RYAN of Wisconsin, Mrs. BIGGERT, Mr. WELLER, Mr. KIRK, Mrs. JO ANN DAVIS of Virginia, Mr. RAMSTAD, Mr. COBLE, Mr. KENNEDY of Rhode Island, Mr. HAYWORTH, Mrs. CAPPS, Mr. HOYER, Mr. HASTINGS of Washington, Mr. STENHOLM, Mr. ENGEL, Mr. PRICE of North Carolina, Mr. BALDACCI, Mr. LEACH, Mr. BACHUS, Mrs. MYRICK, Mr. ROYCE, Mr. REYNOLDS, Mrs. BONO, Mr. SHAYS, Mr. SHUSTER, Mr. McKEON, Ms. NORTON, Mr. BURR of North Carolina, Mr. DOYLE, Mr. FLETCHER, Mr. BRYANT, Mr. UDALL of Colorado, Mr. BOSWELL, Mr. HILLEARY, Mr. SABO, Mr. TANNER, Mr. PAYNE, Mr. GRUCCI, Mr. WALSH, Mr. TOM DAVIS of Virginia, Mrs.

KELLY, Mr. PETERSON of Pennsylvania, Mr. UPTON, Mr. ROEMER, Mr. RANGEL, Mr. CLAY, Mr. WOLF, Mr. HOUGHTON, Mr. BOUCHER, Mr. ISRAEL, Mr. McDERMOTT, Mrs. MINK of Hawaii, Mr. SIMMONS, Ms. MCCARTHY of Missouri, Ms. DELAURO, Ms. RIVERS, Mr. SNYDER, Mrs. MEEK of Florida, Ms. ROS-LEHTINEN, Mr. ETHERIDGE, Mr. BAIRD, and Mr. HEFLEY

OCTOBER 7, 2002

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on May 9, 2002]

A BILL

To designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Sports Agent Responsi-*
5 *bility and Trust Act”.*

6 **SEC. 2. DEFINITIONS.**

7 *As used in this Act, the following definitions apply:*

8 (1) *AGENCY CONTRACT.*—*The term “agency con-*
9 *tract” means an oral or written agreement in which*
10 *a student athlete authorizes a person to negotiate or*
11 *solicit on behalf of the student athlete a professional*
12 *sports contract or an endorsement contract.*

1 (2) *ATHLETE AGENT.*—*The term “athlete agent”*
2 *means an individual who enters into an agency con-*
3 *tract with a student athlete, or directly or indirectly*
4 *recruits or solicits a student athlete to enter into an*
5 *agency contract, and does not include a spouse, par-*
6 *ent, sibling, grandparent, or guardian of such student*
7 *athlete, or an individual acting solely on behalf of a*
8 *professional sports team or professional sports organi-*
9 *zation.*

10 (3) *ATHLETIC DIRECTOR.*—*The term “athletic*
11 *director” means an individual responsible for admin-*
12 *istering the athletic program of an educational insti-*
13 *tution or, in the case that such program is adminis-*
14 *tered separately, the athletic program for male stu-*
15 *dents or the athletic program for female students, as*
16 *appropriate.*

17 (4) *COMMISSION.*—*The term “Commission”*
18 *means the Federal Trade Commission.*

19 (5) *ENDORSEMENT CONTRACT.*—*The term “en-*
20 *dorsement contract” means an agreement under*
21 *which a student athlete is employed or receives con-*
22 *sideration for the use by the other party of that indi-*
23 *vidual’s person, name, image, or likeness in the pro-*
24 *motion of any product, service, or event.*

1 (6) *INTERCOLLEGIATE SPORT.*—*The term “inter-*
2 *collegiate sport” means a sport played at the colle-*
3 *giate level for which eligibility requirements for par-*
4 *ticipation by a student athlete are established by a*
5 *national association for the promotion or regulation*
6 *of college athletics.*

7 (7) *PROFESSIONAL SPORTS CONTRACT.*—*The*
8 *term “professional sports contract” means an agree-*
9 *ment under which an individual is employed, or*
10 *agrees to render services, as a player on a profes-*
11 *sional sports team, with a professional sports organi-*
12 *zation, or as a professional athlete.*

13 (8) *STATE.*—*The term “State” includes a State*
14 *of the United States, the District of Columbia, Puerto*
15 *Rico, the United States Virgin Islands, or any terri-*
16 *tory or insular possession subject to the jurisdiction*
17 *of the United States.*

18 (9) *STUDENT ATHLETE.*—*The term “student ath-*
19 *lete” means an individual who engages in, is eligible*
20 *to engage in, or may be eligible in the future to en-*
21 *gage in, any intercollegiate sport. An individual who*
22 *is permanently ineligible to participate in a par-*
23 *ticular intercollegiate sport is not a student athlete*
24 *for purposes of that sport.*

1 **SEC. 3. REGULATION OF UNFAIR AND DECEPTIVE ACTS AND**
 2 **PRACTICES IN CONNECTION WITH THE CON-**
 3 **TACT BETWEEN AN ATHLETE AGENT AND A**
 4 **STUDENT ATHLETE.**

5 (a) *CONDUCT PROHIBITED.*—*It is unlawful for an ath-*
 6 *lete agent to—*

7 (1) *directly or indirectly recruit or solicit a stu-*
 8 *dent athlete to enter into an agency contract, by—*

9 (A) *giving any false or misleading informa-*
 10 *tion or making a false promise or representation;*
 11 *or*

12 (B) *providing anything of value to a stu-*
 13 *dent athlete or anyone associated with the stu-*
 14 *dent athlete before the student athlete enters into*
 15 *an agency contract;*

16 (2) *enter into an agency contract with a student*
 17 *athlete without providing the student athlete with the*
 18 *disclosure document described in subsection (b); or*

19 (3) *predate or postdate an agency contract.*

20 (b) *REQUIRED DISCLOSURE BY ATHLETE AGENTS TO*
 21 *STUDENT ATHLETES.*—

22 (1) *IN GENERAL.*—*In conjunction with the en-*
 23 *tering into of an agency contract, an athlete agent*
 24 *shall provide to the student athlete, or, if the student*
 25 *athlete is under the age of 18 to such student athlete's*
 26 *parent or legal guardian, a disclosure document that*

1 *meets the requirements of this subsection. Such disclo-*
2 *sure document is separate from and in addition to*
3 *any disclosure which may be required under State*
4 *law.*

5 (2) *SIGNATURE OF STUDENT ATHLETE.—The*
6 *disclosure document must be signed by the student*
7 *athlete, or, if the student athlete is under the age of*
8 *18 by such student athlete’s parent or legal guardian,*
9 *prior to entering into the agency contract.*

10 (3) *REQUIRED LANGUAGE.—The disclosure docu-*
11 *ment must contain, in close proximity to the signa-*
12 *ture of the student athlete, or, if the student athlete*
13 *is under the age of 18, the signature of such student*
14 *athlete’s parent or legal guardian, a conspicuous no-*
15 *tice in boldface type stating: “***Warning to Stu-**
16 **dent Athlete: If you agree orally or in**
17 **writing to be represented by an agent now**
18 **or in the future you may lose your eligi-**
19 **bility to compete as a student athlete in**
20 **your sport. Within 72 hours after entering**
21 **into this contract or before the next ath-**
22 **letic event in which you are eligible to**
23 **participate, whichever occurs first, both**
24 **you and the agent by whom you are agree-**
25 **ing to be represented must notify the ath-**

1 ***letic director of the educational institu-***
 2 ***tion at which you are enrolled, or other***
 3 ***individual responsible for athletic pro-***
 4 ***grams at such educational institution,***
 5 ***that you have entered into an agency con-***
 6 ***tract.***”.

7 **SEC. 4. ENFORCEMENT.**

8 (a) *UNFAIR OR DECEPTIVE ACT OR PRACTICE.*—A vio-
 9 *lation of this Act shall be treated as a violation of a rule*
 10 *defining an unfair or deceptive act or practice prescribed*
 11 *under section 18(a)(1)(B) of the Federal Trade Commission*
 12 *Act (15 U.S.C. 57a(a)(1)(B)).*

13 (b) *ACTIONS BY THE COMMISSION.*—*The Commission*
 14 *shall enforce this Act in the same manner, by the same*
 15 *means, and with the same jurisdiction, powers, and duties*
 16 *as though all applicable terms and provisions of the Federal*
 17 *Trade Commission Act (15 U.S.C. 41 et seq.) were incor-*
 18 *porated into and made a part of this Act.*

19 **SEC. 5. ACTIONS BY STATES.**

20 (a) *IN GENERAL.*—

21 (1) *CIVIL ACTIONS.*—*In any case in which the*
 22 *attorney general of a State has reason to believe that*
 23 *an interest of the residents of that State has been or*
 24 *is threatened or adversely affected by the engagement*
 25 *of any athlete agent in a practice that violates section*

1 3 of this Act, the State may bring a civil action on
2 behalf of the residents of the State in a district court
3 of the United States of appropriate jurisdiction to—

4 (A) enjoin that practice;

5 (B) enforce compliance with this Act;

6 (C) obtain damage, restitution, or other
7 compensation on behalf of residents of the State;
8 or

9 (D) obtain such other relief as the court
10 may consider to be appropriate.

11 (2) NOTICE.—

12 (A) IN GENERAL.—Before filing an action
13 under paragraph (1), the attorney general of the
14 State involved shall provide to the Commis-
15 sion—

16 (i) written notice of that action; and

17 (ii) a copy of the complaint for that
18 action.

19 (B) EXEMPTION.—Subparagraph (A) shall
20 not apply with respect to the filing of an action
21 by an attorney general of a State under this sub-
22 section, if the attorney general determines that it
23 is not feasible to provide the notice described in
24 that subparagraph before filing of the action. In
25 such case, the attorney general of a State shall

1 *provide notice and a copy of the complaint to the*
2 *Commission at the same time as the attorney*
3 *general files the action.*

4 ***(b) INTERVENTION.—***

5 ***(1) IN GENERAL.—****On receiving notice under*
6 *subsection (a)(2), the Commission shall have the right*
7 *to intervene in the action that is the subject of the no-*
8 *tice.*

9 ***(2) EFFECT OF INTERVENTION.—****If the Commis-*
10 *sion intervenes in an action under subsection (a), it*
11 *shall have the right—*

12 ***(A)*** *to be heard with respect to any matter*
13 *that arises in that action; and*

14 ***(B)*** *to file a petition for appeal.*

15 ***(c) CONSTRUCTION.—****For purposes of bringing any*
16 *civil action under subsection (a), nothing in this title shall*
17 *be construed to prevent an attorney general of a State from*
18 *exercising the powers conferred on the attorney general by*
19 *the laws of that State to—*

20 ***(1)*** *conduct investigations;*

21 ***(2)*** *administer oaths or affirmations; or*

22 ***(3)*** *compel the attendance of witnesses or the*
23 *production of documentary and other evidence.*

24 ***(d) ACTIONS BY THE COMMISSION.—****In any case in*
25 *which an action is instituted by or on behalf of the Commis-*

1 sion for a violation of section 3, no State may, during the
 2 pendency of that action, institute an action under sub-
 3 section (a) against any defendant named in the complaint
 4 in that action—

5 (e) *VENUE*.—Any action brought under subsection (a)
 6 may be brought in the district court of the United States
 7 that meets applicable requirements relating to venue under
 8 section 1391 of title 28, United States Code.

9 (f) *SERVICE OF PROCESS*.—In an action brought
 10 under subsection (a), process may be served in any district
 11 in which the defendant—

12 (1) is an inhabitant; or

13 (2) may be found.

14 **SEC. 6. PROTECTION OF EDUCATIONAL INSTITUTION.**

15 (a) *NOTICE REQUIRED*.—Within 72 hours after enter-
 16 ing into an agency contract or before the next athletic event
 17 in which the student athlete may participate, whichever oc-
 18 curs first, the athlete agent and the student athlete shall
 19 each inform the athletic director of the educational institu-
 20 tion at which the student athlete is enrolled, or other indi-
 21 vidual responsible for athletic programs at such educational
 22 institution, that the student athlete has entered into an
 23 agency contract, and the athlete agent shall provide the ath-
 24 letic director with notice in writing of such a contract.

25 (b) *CIVIL REMEDY*.—

1 (1) *IN GENERAL.*—*An educational institution*
2 *has a right of action against an athlete agent for*
3 *damages caused by a violation of this Act.*

4 (2) *DAMAGES.*—*Damages of an educational in-*
5 *stitution may include losses and expenses incurred be-*
6 *cause, as a result of the conduct of the athlete agent,*
7 *the educational institution was injured by a violation*
8 *of this Act or was penalized, disqualified, or sus-*
9 *pended from participation in athletics by a national*
10 *association for the promotion and regulation of ath-*
11 *letics, by an athletic conference, or by reasonable self-*
12 *imposed disciplinary action taken to mitigate actions*
13 *likely to be imposed by such an association or con-*
14 *ference.*

15 (3) *COSTS AND ATTORNEYS FEES.*—*In an action*
16 *taken under this section, the court may award to the*
17 *prevailing party costs and reasonable attorneys fees.*

18 (4) *EFFECT ON OTHER RIGHTS, REMEDIES AND*
19 *DEFENSES.*—*This section does not restrict the rights,*
20 *remedies, or defenses of any person under law or eq-*
21 *uity.*

22 **SEC. 7. SENSE OF CONGRESS.**

23 *It is the sense of Congress that States should enact the*
24 *Uniform Athlete Agents Act of 2000 drafted by the National*
25 *Conference of Commissioners on Uniform State Laws, to*

1 *protect student athletes and the integrity of amateur sports*
2 *from unscrupulous sports agents. In particular, it is the*
3 *sense of Congress that States should enact the provisions*
4 *relating to the registration of sports agents, the required*
5 *form of contract, the right of the student athlete to cancel*
6 *an agency contract, the disclosure requirements relating to*
7 *record maintenance, reporting, renewal, notice, warning,*
8 *and security, and the provisions for reciprocity among the*
9 *States.*

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